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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,791	08/19/2003	Robert K. Zentner	3360/3(a)	4780

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EXAMINER
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PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/643,791

**Applicant(s)**

ZENTNER, ROBERT K.

**Examiner**

Alexandra K Pechhold

**Art Unit**

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 11, 12, 14, and 15 is/are rejected.
- 7) ☒ Claim(s) 5, 10, 13 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>filed 8/19/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**2. Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Brien et al (US 5,120,217).**

Regarding claims 1 and 6, O'Brien discloses a road surface repair kit comprising:

1) a premeasured amount of a binder component housed in an outside container, seen as the binder that comprises the initially solid asphaltic material housed in enclosure (14) (Col 4, lines 10-15),

2) a premeasured amount of an aggregate component housed in the same container, seen as the aggregate that comprises the initially solid asphaltic material housed in enclosure (14) (Col 4, lines 10-15),

3) an outside container that houses both the binder and aggregate, seen as enclosure (18) (Col 4, line 15).

Regarding claims 2 and 7, the aggregate is embedded in the binder since the initially solid asphaltic material disclosed in column 4, lines 10-15 is reclaimed asphalt which is made up of a mixture of both aggregate and binder.

Art Unit: 3671

Regarding claims 3 and 8, the enclosure (14) contains aggregate and binder since the initially solid asphaltic material disclosed in column 4, lines 10-15 is reclaimed asphalt which is made up of a mixture of both aggregate and binder.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

**5. Claims 1-4, 6-9, 11, 12, 14, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by McIntosh (US 6,315,492).**

Regarding claims 1 and 6, McIntosh discloses a road surface repair kit comprising:

1) a premeasured amount of a binder component housed in an outside container, seen as the binder in claim 10, parts (a) and (b), which is housed in a meltable plastic bag disclosed in claim 10, part (c),

2) a premeasured amount of an aggregate component housed in the same container, seen as the aggregate disclosed in claim 10, part (b), housed in the same plastic bag disclosed in claim 10, part (c),

3) an outside container that houses both the binder and aggregate, seen as the containment of the heating device disclosed in claim 10, part (d).

Regarding claims 2 and 7, the two components are embedded since McIntosh discloses in claim 10, part (b) that they are mixed.

Regarding claims 3 and 8, the amounts are premeasured in the bag, which can be inferred from claim 10.

Regarding claims 4 and 9, claim 10, part (c) discloses the bag as meltable.

Regarding claims 11 and 14, McIntosh discloses a road surface repair kit comprising:

(1) a premeasured amount of an aggregate component, disclosed in claim 10, part (b),

(2) a premeasured amount of binder component, disclosed in claim 10, part (a),

(3) a meltable polymeric inner container with both components, disclosed as the meltable plastic bag in claim 10, part (c), and

(4) an outside container that contains the meltable polymeric inner container, disclosed as the containment of the heating device disclosed in claim 10, part (d).

Art Unit: 3671

With respect to the limitation in part (2) of the applicant's claims about the steps of pouring and solidifying, the method steps are not germane to the issue of patentability of the device itself, and therefore have not been given patentable weight.

Regarding claims 12 and 15, McIntosh discloses in claim 10, part (c) that the inner container is a bag.

#### ***Allowable Subject Matter***

6. Claims 5, 10, 13, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3671

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**

AKP  
1/27/05